IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

OP.No. 6195 of 1999(K)

PETITIONER:

DR. A.D.DHARMARATNAM, ASST. PROFESSOR OF DERMATOLOGY AND VENEROLOGY, DHANWANTHARY BHAVAN, PALACE ROAD, ALAPPUZHA-11.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

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1. STATE OF KERALA, REP. BY SECRETARY TO GOVERNMENT, HEALTH & FAMILY WELFARE (SPL) DEPARTMENT, THIRUVANANTHAPURAM.

2. THE DIRECTOR, DIRECTORATE OF MEDICAL EDUCATION, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. NOBLE MATHEW.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF LETTER DT. 27-6-94.

EXT.P1(a) MEMO OF CHARGE DT. 13-4-1994.

EXT.P1(b) STATEMENT OF ALLEGATIONS.

EXT.P2 WRITTEN STATEMENT.

EXT.P3 ORDER DT. 20-8-1996.

EXT.P4 SHOW CAUSE NOTICE DT. 27-12-1996.

EXT.P5 WRITTEN STATEMENT DT. 80501997.

EXT.P6 ORDER DT. 14-12-1998.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 6195 of 1999

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Dated this, the 7th February, 2007.

J U D G M E N T

The petitioner was an Assistant Professor of Dermatology and Venereology in the Medical Colleges under the Government of Kerala. After an extended period of long leave, the petitioner reported for duty before the Director of Medical Education on 21-1-1993 and he was given a posting at Medical College, Kozhikode as per order dated 28-10-1993. However, instead of joining duty there, the petitioner filed O.S.No. 488/1993 before the Munsiff's Court, Alappuzha claiming that he should have been promoted as Associate Professor. Since the petitioner did not join duty pursuant to the order dated 28-10-1993, disciplinary proceedings were initiated against him. Memo of charges were issued, explanation received and an enquiry was conducted by the Joint Director of Medical Education. The enquiry officer recommended that the petitioner may be given an opportunity to join back in service. Therefore, the petitioner was directed to join duty within two weeks and the petitioner presented himself before the Director of Medical Education on 18-4-1996. He was given a posting order dated 20-8-1996, directing him to report for duty at Medical College, Kozhikode. Although the petitioner received the order dated 20-8-1996, he did not join duty at Medical College, Kozhikode, pursuant to the said order. Therefore, a provisional decision to remove the petitioner from service with effect from 10-4-1993 was communicated to the petitioner directing him to show cause why that provisional decision should not be finalised. After obtaining time to file explanation, the petitioner filed an explanation denying all the allegations against him and requesting to give him appropriate posting orders. On the allegation that the explanation furnished by the petitioner was not satisfactory, the Government referred its provisional decision to remove the petitioner from service to the

Public Service Commission for advice. The Public Service Commission concurred with the decision of the Government. Accordingly, by Ext. P6 order, the petitioner was removed from service with effect from 10-4-1993. The said order is under challenge in this original petition.

2. The petitioner's contention is that Ext. P6 order has been passed in violation of all cannons of service jurisprudence. According to him, removal from service is a major penalty as contemplated under the Kerala Civil Services (Classification, Control & Appeal) Rules and imposition of such a penalty on the petitioner could have been only after complying with the procedure prescribed under the said Rules for imposition of major penalty, which includes conducting of an enquiry and finding the petitioner guilty in such enquiry with opportunity to defend himself and thereafter a show cause notice with copy of the enquiry report on the question of punishment as well. Since, before issuing Ext. P6 order, no such procedure has been complied with, Ext. P6 order is patently unsustainable.

3. Learned Government Pleader, on the strength of the counter affidavit filed in this case, submits that Ext. P6 order is only a continuation of the earlier proceedings in which an enquiry against the petitioner was actually conducted and that is why the petitioner has been removed from service with effect from 10-4-1993.

4. I have considered the rival arguments in detail.

5. Ext. P6, of course, refers to an earlier enquiry under Rule 15 of the Kerala Civil Services (Classification, Control & Appeal) Rules. But, the result of the same is not mentioned in Ext. P6. The petitioner submits that he has been exonerated of all charges by the enquiry officer. Whatever that be, Ext. P6 specifically states that the enquiry officer recommended that the petitioner may be given an opportunity

to join back in service. That would essentially mean that the proceedings initiated prior to the recommendation of the enquiry officer ended there since the recommendation of the enquiry officer was accepted by the Government and the Government had directed the petitioner to join duty within two weeks and he was given an order dated 20-8-1996 to rejoin duty at the Medical College, Kozhikode. Ext. P6 makes abundantly clear that the further action which has been taken is only in respect of joining of duty by the petitioner pursuant to the order dated 20-8-1996. The respondents have no case that pursuant to the show cause notice for non-joining duty as contemplated in the order dated 20-8-1996, proceedings contemplated under Kerala Civil Services (Classification, Control & Appeal) Rules have been initiated and completed. Ext. P6 specifically states that in answer to the show cause notice issued to the petitioner, he had in fact filed a written statement denying all allegations against him. Apparently, it seems that the dispute between the the petitioner and the Government is as to whether the petitioner is entitled to be posted as Associate Professor. Whatever that be, it remains a fact that for non-joining of duty on 20-8-1996, no proceedings contemplated under Kerala Civil Services (Classification, Control & Appeal) Rules have been complied with. Since removal from service is a major penalty as contemplated under the said Rules, the petitioner could not have been imposed with the penalty of removal from service without complying with the procedure contemplated under Rule 15. For that reason alone, Ext. P6 order is liable to be quashed. I do so.

6. However, still the question remains as to what should be the relief granted to the petitioner since he has already crossed the age of superannuation. Admittedly, he has not worked during this period

also. Therefore, I am of opinion that the petitioner should be deemed to have been retired from service on his attaining the age of superannuation of 55 years. However, he would not be entitled to any backwages for the period he did not actually work. Petitioner's retirement benefits would be fixed taking into account the period up to the date when he attained the age of superannuation as qualifying service for retirement benefits. The retirement benefits due to the petitioner computed accordingly shall be disbursed to him within three months from the date of receipt of a copy of this judgment. The original petition is disposed of as above.

Sd/- S. Siri Jagan, Judge.

Tds/

S. Siri Jagan, J.

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O.P. No. 6195 of 1999

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J U D G M E N T

7th February, 2007.